

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LESLIE BROOKS SWARTOUT, JR.,

Plaintiff,

Case No. 1:07-CV-315

v.

Hon. Robert J. Jonker

CORRECTIONAL MEDICAL
SERVICES, INC., et al.,

Defendants.

ORDER

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 52) filed on June 11, 2008. On July 17, 2008, Plaintiff filed his objection to the Report and Recommendation. (Docket # 56.)

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Scoville; the Report and Recommendation itself; and Plaintiff's objection. After its review, the Court finds Magistrate Judge Scoville's Report and Recommendation to be both factually sound and legally correct. The Report and Recommendation recommends that the motion for summary judgment by Defendants CMS and Hutchinson be granted and Plaintiff's motion for a preliminary injunction be denied. Plaintiff's objection simply restates his claim for relief.

Plaintiff's objection is without merit. The Report and Recommendation concludes that Plaintiff presented no evidence implicating Defendant Hutchinson in this case; there is no evidence that Dr. Hutchinson subjectively perceived and disregarded an excessive risk to Plaintiff's health or safety. The Report and Recommendation further concludes that Plaintiff has presented no evidence regarding a CMS policy or custom that caused Plaintiff to suffer an injury of constitutional dimension. Plaintiff's objection entirely fails to present even a scintilla of evidence to cure the deficiencies identified in the Report and Recommendation.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed June 11, 2008 (docket # 52), is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that the motion for summary judgment by Defendants CMS and Hutchinson (docket # 33) is **GRANTED** and Plaintiff's motion for a preliminary injunction (docket # 49) is **DENIED**.

Dated: August 28, 2008

/s/ Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE